

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**Criminal Misc. No. A-1418-MA of 2015 (O&M)
Date of decision: 27.11.2015**

State of Haryana

..Applicant

Versus

Mukesh Kumar

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes**
- 2. To be referred to reporters or not? Yes**
- 3. Whether the judgment should be reported in the Digest? Yes**

Present: Mr. Baljinder Singh Virk, DAG, Haryana
for the applicant-State.

Daya Chaudhary, J.

CRM-26682 of 2015

There is a delay of 49 days in filing the application for grant of leave to appeal against judgment of acquittal. An affidavit of Deputy Superintendent of Police, Dabwali, District Sirsa has also been attached with the application.

It has been mentioned in the application that the case for filing the appeal was sent by District Attorney along with certified copy of the judgment to District Magistrate, Sirsa and thereafter, it was sent to the office of Advocate General, Haryana, Chandigarh. Delay occurred is procedural as the file was moved before different offices.

Application is allowed as per the grounds mentioned

therein and delay of 49 days in filing the application is condoned.

CRM-A-1418-MA of 2015

The present application has been filed under Section 378(3) of the Code of Criminal Procedure for grant of leave against the judgment of acquittal dated 25.03.2015 passed by the Additional Sessions Judge, Sirsa, whereby, the accused-respondent has been acquitted of the charge.

FIR No.254 dated 28.10.2011 was registered under Section 17 of the Narcotic Drugs and Psychotropic Substances Act (for short 'NDPS Act'), 1985 at Police Station Sadar Dabwali.

As per the case of the prosecution, on 28.10.2011, the Police party present at Bus Stand, Matdadu saw a motorcycle coming from the direction of village Lambi. On seeing the Police party, driver of the motorcycle turned back because of which, their suspicion aroused on the rider of the motorcycle. After giving notice under Section 50 of the NDPS Act, search was conducted upon accused-Mukesh Kumar and it was found that he was carrying opium in a plastic bag, which on weighing was found to be 950 gms, out of which, two samples of 10 gms each were removed and the residue was put in a plastic box. After preparation of parcels and on affixing seal, the motorcycle was also taken into possession. Thereafter, a formal FIR was registered and after recording the statements of the witnesses and on completing the formalities of investigation, challan was presented against accused persons and thereafter, charge was

framed.

The prosecution examined ASI Om Parkash as PW1, HC Ajit Singh as PW2, Bachan Singh, SI (Retd.) as PW3, EASI Shakrudin as PW4, Nipender Singh Chauhan as PW5, HC Suresh Kumar as PW6, SI Rattan Singh as PW7, SI Ran Singh as PW8 and ASI Satbir Singh as PW9.

Thereafter, statement of accused under Section 313 Cr.P.C. was recorded wherein he denied the allegations and claimed false implication.

The accused also examined Sukhdev Singh as DW1, Bhajan Lal as DW2, ASI Sharwan Kumar as DW3 and HC Nishan Singh as DW4 in his defence.

On appreciation of evidence and after hearing both the sides, learned trial Court acquitted the accused-Mukesh Kumar from the charge framed against him vide its judgment dated 25.03.2015. In the findings recorded by the trial Court, it has clearly been mentioned that the specimen seal on the piece of cloth, which was taken at the time of preparing of the samples, was not sent to FSL, Madhuban and only a specimen seal impression on the forwarding authority's letter was sent to the laboratory, which is also evident from affidavit Ex.PW9/A of ASI Satbir Singh. He has stated in his statement on 31.10.2011 that a sample parcel along with docket were handed over to EASI Shakrudin vide RC No.468 dated 31.10.2011 for depositing the same in FSL Madhuban. It was observed by the Court that the

prosecution had failed to prove that the sample seal on piece of cloth, which was taken at the time of drawing the samples, was sent to FSL Madhuban as there was no evidence on record that the forwarding letter was prepared at the time of drawing of the samples and the seal impression of the seal of the Investigating Officer was affixed on 28.10.2011. It is not clear as to how the Investigating Officer could have affixed his seal on the forwarding authority's letter. As per testimonies of PW1 and PW8, the seal was handed over to ASI Ran Singh at the place of occurrence and it was not returned to the Investigating Officer for the next four days. Even none of the witnesses have deposed that the letter, which was sent to FSL, Madhuban along with the sample parcel, was prepared at the place of occurrence. The sample parcel was bearing one seal of SHO but in the entire testimony of SHO Rattan Singh-PW7, there is no mention of any forwarding authority's letter being produced before him along with case property. In the entire testimony of this witness, there is no mention of any forwarding authority's letter. It could not be proved that as to when and how the Investigating Officer had affixed his seal on the forwarding authority's letter, which was sent to FSL Madhuban along with the sample parcel. The Investigating Officer has also deposed in his cross-examination that he had prepared FSL form but has failed to explain as to why the same was not mentioned in the application Ex.PH under Section 52-A of the NDPS Act. He could not explain as to why it was not produced before learned Magistrate along

with the case property.

Admittedly, the recovery was made at a public place and the presence of members of the public has been admitted by PW1 and PW8 but no person was joined at the time of recovery. No doubt, mere failure to join an independent witness at the time of recovery is not fatal for the prosecution because official witness cannot be disbelieved simply for the reason that they are Police officials but in the present case, not only material contradictions and discrepancies are there regarding seal but failure to join an independent witness at the time of recovery also makes the case of the prosecution doubtful. As per statement of PW1, many members of public were present at the time of recovery and he asked 5-7 persons to join the investigation but they refused. It has also been mentioned in his statement that village Matdadu and village Lambi were at a distance of 2 kms but no responsible person like Chowkidar, Numberdar, Sarpanch or Panch of the village were called to join the investigation. PW8 has also stated that there was a marriage palace and a liquor-vend near Bus Stand, Matdadu and 5-7 persons were present at the time of Nakabandi but they refused to join investigation. The statements of PW1 and PW8 are contradictory, which creates doubt in the prosecution version.

Other than these contradictions and inconsistencies in the statements of prosecution witnesses, other discrepancies were also there, which created doubt in the version of the prosecution. Therefore, by considering these statements of prosecution witnesses,

when the prosecution has not been able to prove its case beyond reasonable doubt, by granting benefit of doubt, the accused was acquitted of the charge framed against him.

The only arguments, which have been raised by learned counsel for the applicant-State is that minor discrepancies are there, which occur with lapse of time and statements of official witnesses should not be disbelieved. These two arguments do not carry any weight as a detailed finding has been recorded by the trial Court. The prosecution is to prove its case beyond reasonable doubt but it has failed. Moreover, stringent penal provisions providing harsh punishment have been enacted and for that strict compliance of the safeguards provided under the statute are to be observed by the Police. Moreover, it is the duty of the prosecution to prove that the sample remained intact and there was no scope of tempering with it till it has reached the office of the Chemical Examiner but in the present case, the same has not been proved. Once the presumption is stumbling on the vital aspect, the benefit is to be extended to the accused. It is the fundamental duty of the prosecution to prove beyond reasonable doubt that the investigation conducted in the case is absolutely flawless specifically with regard to the link evidence, which is of utmost significance.

In view of the above discussion, the prosecution had failed to prove its case beyond reasonable doubt, hence, by granting benefit of doubt, the accused was acquitted of the charge.

Moreover, limited scope is there to interfere with the judgment of acquittal and as such, there is no merit in the contentions raised by learned counsel for the applicant-State. Hence, the application for grant of leave to appeal against judgment of acquittal is dismissed.

27.11.2015
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(DAYA CHAUDHARY)
JUDGE